

TO:

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**REPORT ON THE
FILING OR DETERMINATION OF AN
ACTION REGARDING A PATENT OR
TRADEMARK**

In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Colorado on the following

Patents

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT
10-cv-02850	11/22/10	FOR THE DISTRICT OF COLORADO
PLAINTIFF		DEFENDANT
Muth Pump LLC		Eagle Innovations Inc.
PATENT OR	DATE OF PATENT	HOLDER OF PATENT OR TRADEMARK
1 <i>6,543,543</i> ⁸²		Please see copy of Complaint attached hereto
2 <i>6,250,392</i> ⁸¹		
3		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY	<input type="checkbox"/> Amendment	<input type="checkbox"/> Answer	<input type="checkbox"/> Cross Bill	<input type="checkbox"/> Other Pleading
PATENT OR	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK			
1					
2					
3					
4					
5					

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK GREGORY C. LANGHAM	(BY) DEPUTY CLERK	DATE
------------------------------------	-------------------	------

**Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to
Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.: _____

MUTH PUMP LLC,

PLAINTIFF,

v.

EAGLE INNOVATIONS INC.,

DEFENDANT.

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Muth Pump LLC, by way of complaint against Eagle Innovations Inc., says:

PARTIES

1. Plaintiff Muth Pump LLC ("Muth") is a California limited liability company with its principal place of business at 13905 Romero Avenue, Bakersfield, California 93314.
2. Defendant Eagle Innovations Inc. ("Eagle") is a Colorado corporation with its principal place of business at 175 W 900 S, Unit 7, Saint George, Utah, 84770.

JURISDICTION

3. This is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 101, *et seq.* This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338.

4. Upon information and belief, this Court has jurisdiction over Eagle because Eagle is a Colorado corporation. Venue is proper in this district under 28 U.S.C. §§ 1331(b) and (c) and § 1400(b) as Eagle is subject to personal jurisdiction in this district.

COUNT ONE
(Infringement of U.S. Patent No. 6,543,543 B2)

5. On April 8, 2003, United States Patent No. 6,543,543 B2, titled "Pump Systems and Methods," was duly and legally issued to Garold M. Muth (the "'543 patent"). A true and correct copy of the '543 patent is attached as Exhibit A to this complaint.

6. By assignment, Muth now owns all rights, title and interest in and to the '543 patent, including but not limited to the right to enforce the '543 patent and collect damages for past and future infringements.

7. Eagle has made, used, sold, or offered to sell products, including but not necessarily limited to the Cyclone E-VAC Pump System, Sandmaster E-Vac Plunger and/or Product Number EV-2-00-0001-750 2009 WEI depicted in the attached Exhibit B, that infringe at least Claim 9 of the '543 patent in the United States.

8. On information and belief, Eagle's actions in infringing the '543 patent have been, and still are, willful, deliberate, or in conscious disregard of the rights of Muth or its predecessors-in-interest, making this an exceptional case within the meaning of 35 U.S.C. § 285. Eagle was put on actual notice of the '543 patent and its infringement of the patent as of at least May 4, 2010. On information and belief, Eagle's infringement of the '543 patent continues to this date.

9. Eagle has induced or contributed to direct infringement by others of at least Claim 9 of the '543 patent by actively instructing, assisting, or encouraging consumers to make, use, sell, offer to sell, or import products, including but not limited to the Cyclone E-VAC Pump System.

10. On information and belief, Eagle knowingly induced and encouraged consumers to make, use, sell, offer to sell, or import products, including but not limited to the

Cyclone E-VAC Pump System. On information and belief, Eagle knew that use of its products, including but not limited to Cyclone Top Plunger Adapter, used in combination with the Cyclone E-VAC Pump System results in direct infringement of the '543 patent by Eagle consumers.

11. Eagle's Cyclone Top Plunger Adapter is a material part of the Cyclone E-VAC Pump System and lacks substantial uses, other than those which infringe the '543 patent.

12. On information and belief, the infringement of the '543 patent by Eagle will continue unless enjoined by this Court.

13. The infringing activities by Eagle have caused and will continue to cause irreparable injury to Muth for which there exists no adequate remedy at law.

COUNT TWO
(Infringement of U.S. Patent No. 6,250,392 B1)

14. On June 26, 2001, United States Patent No. 6,250,392 B1, titled "Pump Systems and Methods," was duly and legally issued to Garold M. Muth (the "'392 patent"). A true and correct copy of the '392 patent is attached as Exhibit C to this complaint.

15. By assignment, Muth now owns all rights, title and interest in and to the '392 patent, including but not limited to the right to enforce the '392 patent and collect damages for past and future infringements.

16. Eagle has made, used, sold, or offered to sell products, including but not necessarily limited to the Cyclone E-VAC Pump System, Sandmaster E-Vac Plunger and/or Product Number EV-2-00-0001-750 2009 WEI depicted in the attached Exhibit B, that infringe at least Claim 9 of the '392 patent in the United States, or

17. Eagle has induced or contributed to direct infringement by others of at least Claim 9 of the '392 patent by actively instructing, assisting, or encouraging others to make,

use, sell, offer to sell, or import products, including but not limited to the Cyclone E-VAC Pump System.

18. Eagle has induced or contributed to direct infringement by others of at least Claim 9 of the ‘392 patent by actively instructing, assisting, or encouraging consumers to make, use, sell, offer to sell, or import products, including but not limited to the Cyclone E-VAC Pump System.

19. On information and belief, Eagle knowingly induced and encouraged consumers to make, use, sell, offer to sell, or import products, including but not limited to the Cyclone E-VAC Pump System. On information and belief, Eagle knew that use of its products, including but not limited to Cyclone Top Plunger Adapter, used in combination with the Cyclone E-VAC Pump System results in direct infringement of the ‘392 patent by Eagle consumers.

20. Eagle’s Cyclone Top Plunger Adapter is a material part of the Cyclone E-VAC Pump System and lacks substantial uses, other than those which infringe the ‘392 patent.

21. On information and belief, Eagle’s actions in infringing the ‘392 patent have been, and still are, willful, deliberate, or in conscious disregard of the rights of Muth or its predecessors-in-interest, making this an exceptional case within the meaning of 35 U.S.C. § 285. Eagle was put on actual notice of the ‘392 patent and its infringement of the patent as of at least May 4, 2010. On information and belief, Eagle’s infringement of the ‘392 patent continues to this date.

22. On information and belief, the infringement of the ‘392 patent by Eagle will continue unless enjoined by this Court.

23. The infringing activities by Eagle have caused and will continue to cause irreparable injury to Muth for which there exists no adequate remedy at law.

WHEREFORE, Muth requests that judgment be entered in its favor and against Eagle as follows:

- A. Finding that Eagle has directly or indirectly infringed United States Patent No. 6,543,543 B2;
- B. Enjoining Eagle, its officers, agents, subsidiaries, employees, and those in privity or in active concert with it, from further activities that constitute infringement of United States Patent No. 6,543,543 B2 both within the State of Colorado and across the United States;
- C. Ordering that an accounting be had for the profits, reasonable royalties, or other damages arising out of Eagle's infringement of United States Patent No. 6,543,543 B2, and that the damages be trebled and awarded to Muth, together with costs and prejudgment and post-judgment interest;
- D. Finding that Eagle has directly or indirectly infringed United States Patent No. 6,250,392 B1;
- E. Enjoining Eagle, its officers, agents, subsidiaries, employees, and those in privity or in active concert with it, from further activities that constitute infringement of United States Patent No. 6,250,392 B1 both within the State of Colorado and across the United States;
- F. Ordering that an accounting be had for the profits, reasonable royalties, or other damages arising out of Eagle's infringement of United States Patent No. 6,250,392 B1, and that the damages be trebled and awarded to Muth, together with costs and prejudgment and post-judgment interest;

G. Entering judgment that this case is an "exceptional case" within the meaning of 35 U.S.C. § 285 and awarding reasonable attorney's fees to Muth; and

H. Awarding Muth costs and such other further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Fed.R.Civ.P. 38, Muth demands a trial by jury on all issues so triable.

DATED: November 22, 2010

Respectfully submitted,

TOWNSEND AND TOWNSEND AND CREW LLP

By: s/Ian L. Saffer

Ian L. Saffer (Atty. Reg. No. 27475)
Miranda C. Martinez (Atty. Reg. No. 40086)
1400 Wewatta Street, Suite 600
Denver, CO 80202
Telephone: (303) 571-4000
Facsimile: (303) 571-4321
Email: ilsaffer@townsend.com
mcmartinez@townsend.com

Attorneys for Plaintiff
MUTH PUMP LLC

63009286 v1